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Letter dated 18 March 2002 from the Secretary-General addressed to the President of the Security Council

I am attaching for your consideration, and for the consideration of the members of the Security Council, a letter dated 12 March 2002 from the President of the International Tribunal for the Former Yugoslavia, Judge Claude Jorda (see annex).

In his letter, President Jorda addresses two matters.

The first concerns compensation of persons who may have been wrongly detained, prosecuted or convicted by the International Tribunal for the Former Yugoslavia.

President Jorda recalls that in a letter dated 19 September 2000, which I drew to your attention and to the attention of the members of the Security Council in my letter dated 26 September 2000 (S/2000/904), he reported that it was the considered view of the judges of the International Tribunal for the Former Yugoslavia that the Tribunal should be able to make awards of compensation, in certain specific circumstances, to persons who might have been wrongly detained, prosecuted or convicted by the Tribunal. President Jorda observed that, in order for the Tribunal to be able to award compensation in those situations, it would be necessary for the Security Council to amend the Statute of the Tribunal so as to confer upon it the necessary legal powers.

As you will be aware, the Security Council has not, to date, adopted any such amendment to the Tribunal's Statute.

In the attached letter, President Jorda reports that the Tribunal has recently received claims for compensation from two persons held in detention by the Tribunal pending and during their trial, who, having been convicted by a trial chamber, appealed against their convictions. They were held in detention awaiting determination of their appeals and were released after their convictions were quashed by the Tribunal's appeals chamber.

President Jorda is seeking the opinion of the Security Council on the matter addressed in his letter of 19 September 2000 before taking any decision in respect of those claims.

The second matter that President Jorda addresses in his letter concerns the powers of the ad litem judges of the International Tribunal for the Former Yugoslavia.

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President Jorda recalls that, in accordance with the terms of the Statute of the Tribunal, ad litem judges are, as matters stand, competent to adjudicate only in the trial proceedings of the cases to which they are appointed. They are therefore not competent to adjudicate in pre-trial proceedings in other cases that are before the Tribunal, even though they might be available for that purpose, practically speaking.

President Jorda observes that it would facilitate the conduct of judicial business before the Tribunal and promote the more expeditious completion of its mandate if ad litem judges were to enjoy the competence, during the period of their appointment to a trial, to adjudicate in pre-trial proceedings in other cases, should the need arise and should they be in a position to do so.

President Jorda notes that, for this to be possible, it would be necessary for the Security Council to amend the Statute of the Tribunal.

I would be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 12 March 2002 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General

I am writing to you today to request your assistance with regard to two urgent matters of the greatest concern to the International Criminal Tribunal for the Former Yugoslavia: the payment of compensation to persons who have been wrongly prosecuted or sentenced, and the mandate of ad litem judges.

As you are aware, in recent years the judges have expressed concern about the situation of individuals who have been wrongly prosecuted or sentenced by the Tribunal. The international human rights conventions and most national legislations provide that such persons are entitled, under certain conditions, to be compensated for the deprivation of liberty and resultant economic losses. Yet neither the Statute nor the Rules of Procedure and Evidence of the Tribunal embody this right.

I conveyed these concerns to you in a letter dated 19 September 2000, which you transmitted to the President of the Security Council on 26 September 2000.

I am emphasizing this problem today because the Tribunal has recently received two requests for compensation from persons who believe that they were wrongly sentenced. I therefore feel that it is appropriate to request the opinion of the Security Council on the question once again before taking any kind of decision.

My second concern relates to the participation of ad litem judges at the pre-trial stage of cases. Article 13 quater 2 (a) (iv) of the Statute of the Tribunal provides that these judges do not have the power to "adjudicate in pre-trial proceedings". Of course, since the reform of April 2001, a senior legal officer may participate, under the authority of a permanent judge, in the pre-trial stage of a case (article 65 ter of the Rules of Procedure and Evidence). However, the practice of the past six months has shown that with the substantial increase in the number of trials, the Tribunal would be more effective and more dynamic if the ad litem judge could, while attending the hearing in the case assigned to him, participate at the pre-trial stage, that is to say, in the preparation, of other cases. Indeed, since the chambers meet only for half days (it will be recalled that they have to ensure an equal rotation, since the Tribunal has only three trial chambers for six simultaneous trials) in trials which are often very long, the ad litem judges have enough time to take up other ongoing cases. I therefore feel that limiting their mandate would be prejudicial to optimal output in the performance of their tasks.

In order to streamline procedures and hence respect the spirit of the reform of the ad litem judges, I would propose to the Security Council that the wording specifying that these judges do not have the power to "adjudicate in pre-trial proceedings" should be deleted from article 13 quater of the Statute. This proposal seems to me to be all the more justified in that the ad litem judges, because of their knowledge and experience of the operation of the Tribunal, are fully capable of preparing other cases.

I should like to note, however, that the limited and temporary nature of the function of ad litem judges should not be jeopardized by this new task. Ad litem judges should continue to be assigned to a particular trial and only during that trial

would carry out pre-trial work on other cases. There is no question of making them semi-permanent judges, who are automatically called to attend several trials; the idea is to make the most of their mandate, which is limited by the terms of the Statute.

I should be grateful if you would bring the text of this letter to the attention of the President and the members of the Security Council.

(*Signed*) Claude **Jorda**